

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GUSTAVO GALLARDO,

Petitioner,

v.

MATTHEW CATE,

Respondent.

No. C 12-05565 EJD (PR)

ORDER GRANTING MOTION FOR
CLARIFICATION; DENYING
REQUESTS FOR EXPANDING THE
RECORD AND FOR EVIDENTIARY
HEARING

(Docket No. 17)

Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his state conviction in Monterey County. Petitioner has filed a motion for clarification of Court's most recent order, filed October 4, 2013, (see Docket No. 16), and other requests. (Docket No. 17.)

The Court issued an Order to Show Cause on January 8, 2013, (Docket No. 3), which stated that Petitioner's traverse would be due within thirty days of his receipt of Respondent's Answer. Respondent filed an answer on May 7, 2013. (Docket No. 6.) Because it was assumed that Petitioner received a copy of the Answer on the same day, Petitioner's traverse was due thirty days later, *i.e.*, no later than June 6, 2013. Petitioner was then granted an extension of sixty days from the original due date of June 6, 2013, such that his traverse was due by August 6, 2013. (Docket No. 10.) Petitioner filed a


1 second motion for extension of time which the Court granted, providing Petitioner
2 additional time until September 4, 2013, which was a total extension of ninety days
3 *from the original due date* of June 6, 2013, to file a traverse. (Docket No. 13.)

4 On October 4, 2013, the Court granted Petitioner's request that his Petition for
5 Review, lodged as Exhibit 7, be construed as his traverse. (Docket No. 16.) Petitioner
6 now contends that it was not his intension to do so, and believes he has until December
7 4, 2013, to file a traverse. (Docket No. 17 at 2.) As to the latter, Petitioner is mistaken
8 because the Court was unequivocal as to the due date in its last Order granting
9 Petitioner an extension of time. (See Docket No. 13.) Be that as it may, Petitioner shall
10 be granted a final extension of time **until December 4, 2013**, to file a traverse. The
11 matter will be deemed submitted on that date if Petitioner does not file a traverse.

12 Petitioner also requests an expansion of the record to pursue a Brady violation
13 and an evidentiary hearing to find evidence to bolster a claim that an arrest warrant
14 lacked probable cause. The Court notes that neither of these claims were ever presented
15 in the original petition and therefore are outside the scope of this action. Accordingly,
16 the requests are DENIED.

17 This order terminates Docket No. 17.

18
19 DATED: 10/30/13


EDWARD J. DAVILA
United States District Judge